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FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36157]

City and County of Denver—Acquisition Exemption—Western Stock Show Association
in the City and County of Denver, Colo.

The City and County of Denver, Colo. (the City), a political subdivision of the State of Colorado and a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from the Western Stock Show Association (WSSA) the real property underlying two lines of railroad for a total distance of approximately 1.2 miles in the Denver Stockyards in the City (the Lines). The Lines consist of two corridors of rail line: (1) the National Western Drive Corridor (NWD Corridor), which is adjacent to National Western Drive, from the south right-of-way line of East 47th Avenue, extending northeast and then north to the northeastern right-of-way line of Race Court; and (2) the River Corridor, which is adjacent to the east bank of the South Platte River, from the intersection with the NWD Corridor at a point just north of that corridor's southern endpoint, extending north and then northeast to an intersection with the NWD Corridor just south of Race Court.

The City states that it will acquire no right or obligation to provide freight rail service over the Lines.¹ According to the City, although WSSA owns the real property,

¹ A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

the Lines are operated by the Denver Rock Island Railroad (DRIR), a Class III rail carrier, which owns the rail, ties, and ballast over which it conducts its service. The City states that DRIR will retain its common carrier rights to provide rail service over the Lines and ownership of the rails, ties, and track bed, and it will continue its operations on the Lines following the City's acquisition of the real property from WSSA.² According to the City, DRIR's nonexclusive freight operating easement over the Lines will remain in effect, subject to any amendments necessary to address the City's acquisition of the underlying real property and future improvements to and relocation of the Lines, on which the City states it will coordinate with DRIR.³ The City states that it will at no time have the right to interfere with DRIR's ability to fulfill its common carrier freight obligation.

The City explains that it is acquiring the property to implement a comprehensive

² The City states that over time a number of railroads have operated on the Denver Stockyards. Due to acquisitions and consolidations, the City has not been able to confirm that all prior operators have either merged into DRIR or the two carriers for which the agency has authorized discontinuance of service. However, according to the City, for the past two decades DRIR has been the only freight rail operator on the Lines. The City states that it will pursue further proceedings as appropriate to resolve the status of any lingering previously granted common carrier interests.

³ The notice states that following the acquisition, the status quo would continue "with respect to freight rail operations . . . and any future alterations to the site [would] be designed to allow current operations to continue. Further Board approval would be required for DRIR to discontinue or abandon any freight service that DRIR currently offers on the line." (Notice 6-7.) The concurrently filed motion to dismiss states that the "redevelopment includes the proposed consolidation of rail operations on a single corridor." (Mot. 5.) This notice should not be construed as approving, or indicating whether Board approval would be required for, any consolidation of track associated with the redevelopment.

redevelopment plan of the Denver Stockyards to: (a) provide improved facilities for Denver's annual National Western Stock Show and Rodeo; (b) develop, in conjunction with Colorado State University (CSU), an equine sport medicine facility and stock animal research complex; (c) create additional mixed-use facilities, and (d) establish a public park. In connection with the real property acquisition and development project, the City states that the City, WSSA, and CSU entered into a Framework Agreement. As part of the agreement, the parties entered into a Real Property Conveyance Agreement that will govern the transfers of real property including the real property associated with the Lines.

The City certifies that, because it will not conduct any rail carrier operations on the Line, its projected revenues from freight operations will not result in the creation of a Class I or Class II carrier.

The City states that it expects to consummate the proposed transaction in approximately the second quarter of 2018. The earliest this transaction may be consummated is December 28, 2017, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 21, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36157,

must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Ave., N.W., Suite 800, Washington, DC 20036.

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Decided: December 11, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.